

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 658 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

UDAYSHANKER RATILAL TIVARI

Versus

STATE OF GUJARAT

Appearance:

MS DR KACHHAVAH for Petitioner

MR AD OZA, PUBLIC PROSECUTOR for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/09/2000

ORAL JUDGEMENT

1. This petition is filed by the petitioner-original accused of Special Criminal Case No.106 of 1990 judgment and order dated 3-4-91, passed by the learned Special Judge, Court No.4, Ahmedabad, whereby the petitioner was sentenced to undergo 3 months rigorous imprisonment for an offence under Section 3 of the Essential Commodities

Act, 1995.

2. Brief facts of the case are as under :

The complainant Mr. R.M.Barot, P.S.I. received instruction from his superior officers to check the vehicles being plied by mixing kerosene with petrol as fuel. That on 5-7-1990, at about 10-00 a.m. the complainant Mr. R.M.Barot, P.S.I. was on duty and was checking the auto-rickshaws being plied by mixing kerosene with petrol, that auto rickshaw No.G.R.H. 6136 which was emitting huge smoke coming from the Raipur Gate side and it was stopped by him in the presence of panchas and F.S.L. experts sample of fuel was checked on the spot by the experts of F.S.L. and on preliminary examination made by them, it was found that the sample of fuel was mixture of kerosene and petrol and, therefore, in the presence of the above persons 375 m.l. fuel was collected from the rickshaw in one glass bottle and a seal containing signatures of the panchas and the concerned officer-complainant was tied and it was sealed in the presence of the panchas and the concerned party and panchnama to that effect was also prepared and thereafter, the complainant Mr. R.M.Barot, P.S.I., Traffic Branch, filed the complaint under the provisions of Essential Commodities Act and at the end of investigation, charge sheet has been submitted against the petitioner-original accused and it was registered as Special Criminal Case No.106/90, wherein charge has been framed by the Court and the accused pleaded not guilty and claimed to be tried.

3. To prove the guilt against the petitioner-accused, the prosecution in support of its case has examined complainant R.M.Barot, P.S.I. Traffic Branch at Exh.13, Panch Dineshbhai Panchal at Exh.8, Mr. Pravinkumar. B. Patel, Laboratory Technician of F.S.L. at Exh.18, Mr. B.K.Sanghvi, P.S.I., Investigation Squad of Kagdapith Police Station at Exh.19. The evidence produced by the prosecution consist of Panchnama Exh.9, slip containing the signatures of panchas Exh.10, complaint Exh.14, copy of forwarding letter addressed to the F.S.L. at Exh.15, report of the complainant to Kagdapith Police Station at Exh.16 and the report of F.S.L. at Exh.17. Even further statement of the petitioner-accused was also recorded under Section 213 of the Code of Criminal Procedure and after considering the above oral and documentary evidence along with the written arguments submitted by learned advocate for the accused Exh.20, the trial Court has convicted the present petitioner-original accused.

4. I have heard Ms D.R.Kachhavah, learned advocate for the petitioner and Mr. A.D.Oza, learned Government Pleader for the respondent-State. I have also gone through the judgment rendered by the learned Special Judge, Court, No.4, Ahmedabad, which runs in 21 pages and the oral as well as documentary evidence. Ms. Kachhavah has mainly argued that the prosecution failed to prove the case against the petitioner-accused beyond reasonable doubt. She has also argued that the panchas are not independent one, but they are persons of the police and, therefore, their evidence should not be believed by this Court. She has also argued that it was a general checking and, therefore, there are discrepancies in adopting the procedure of applying seal on the muddamal bottle for which she has drawn my attention towards evidence of P.S.I. Shri Barot Exh.13. She has also argued that the prosecution has also failed to prove beyond reasonable doubt that the muddamal which was seized by the prosecution was not reached intact condition and same has been examined by the F.S.L. experts. Learned advocate for the petitioner as well as learned Government Pleader have also read the relevant evidence which are on record and from the evidence on record it is established and proved beyond reasonable doubt that the complainant P.S.I. Mr. Barot and panchas and F.S.L. experts were present on the spot 5-7-90 at 10-00 a.m. and the auto-rickshaw bearing registration No.G.R.X.6136 which was being plied by the present petitioner-original accused and was stopped by the complainant in the presence of his superior officers, panchas, F.S.L. experts and sample of fuel was taken from the said rickshaw in the presence of above people and the same was examined by the experts of F.S.L. on the spot and on preliminary examination, opinion was given by the F.S.L. expert and as per their opinion, there was mixture of kerosene with petrol. Thereafter, 370 m.l. fuel was taken from the fuel tank of the rickshaw in one glass bottle, a cock was plied on the said bottle and seal containing signatures of panchas was also tied and panchnama to that effect was also made. So it is established from the evidence of the prosecution that the sample was taken in the presence of panchas, F.S.L. experts and complainant P.S.I. Mr. Barot and the parties concerned and in the presence of the aforesaid persons the procedure of sealing the sample was made and, thereafter, the sample was sent to F.S.L. for examination and as per the report of the F.S.L. it was found that there is mixture of kerosene in petrol. So, in short, the prosecution has proved the case beyond reasonable doubt and in my opinion, there is no material contradiction come out during the cross-examination of

the prosecution witnesses which can help the petitioner-accused. Looking to the facts and circumstances of the case as aforesaid and looking to the nature of offence which is affecting the health of the public at large, in my view, the order passed by the learned Special Judge, Court, No.4, Ahmedabad, imposing sentence of 3 months R.I. upon the petitioner for the offence under Section 3 of the Essential Commodities Act, is just and proper and this petition is required to be rejected.

5. As a result of the foregoing discussion, this petition is dismissed. Rule discharged.

(R.P.Dholakia, J.)

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